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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

MICHAEL ERWINE,

Plaintiff,

v.

UNITED STATES OF AMERICA, et al.,

Defendants.

Case No.: 3:24-cv-00045-MMD-CSD

**STIPULATED DISCOVERY PLAN AND
SCHEDULING ORDER**

**SPECIAL SCHEDULING REVIEW
REQUESTED**

Pursuant to the requirements of Fed. R. Civ. P. 26(f) and LR 26-1, the Plaintiff and Defendants hereby submit the following Stipulated Discovery Plan and Scheduling Order in the above-captioned matter.

A. Information Requested by Fed. R. Civ. P. 26(f):

1. Counsel for the parties conducted a meeting pursuant to Federal Rule of Civil Procedure 26 and Local Rule 26-1 on Tuesday, August 6, 2024. Pursuant to an agreement between the parties, the parties will serve initial disclosures in accordance with Federal Rule of Civil Procedure 26(a) on or before Tuesday, August 20, 2024.

1 2. Discovery may be conducted on all discoverable matters relevant to issues
2 raised by the First Amended Complaint, ECF No. 59 (as modified by the Court's Order,
3 ECF No. 89), Answers, and any subsequent pleadings, consistent with the Federal Rules
4 of Civil Procedure and the Local Rules of this District.

5 3. No changes or limitations, other than those set forth below, set by either the
6 Federal Rules of Civil Procedure or Local Rules for the District of Nevada are requested
7 at this time.

9 An extended period of time for the completion of discovery is necessary in this
10 case. In addition to the fact that this lawsuit includes wrongful termination claims against
11 two different employers for whom Erwine worked between December of 2015, and March
12 of 2022, the Defendants will be required to seek documents from, and take depositions of,
13 numerous representatives of the law enforcement agencies by whom Erwine claims to
14 have been rejected because of actions of the Defendants. Numerous such law
15 enforcement agencies are located out of state (Dallas, Texas, Greenville, South Carolina,
16 Denver, Colorado, San Francisco, California, Nashville, Tennessee, New Orleans,
17 Louisiana and others). Churchill County and Trotter anticipate, based upon discovery
18 conducted in the prior lawsuit filed by Erwine against the County and Trotter (Case No.
19 3:18-cv-00461), that obtaining documents and information from the law enforcement
20 agencies identified in Plaintiff's First Amended Complaint will require court intervention
21 due to the confidential nature with which law enforcement officers treat applications and
22 background checks on applicants for employment.

25 Churchill County and Ben Trotter seek leave to conduct depositions in excess of
26 the ten-deposition limit set forth in FRCP 30. This lawsuit arises out of Plaintiff's
27 allegations that he was prevented from obtaining employment as a law enforcement
28

1 officer with more than 16 law enforcement agencies, numerous of which are located out
2 of state, as a result, in part, of information contained in the "Trotter Memorandum" more
3 fully described in Plaintiff's First Amended Complaint. In addition to taking the deposition
4 of Erwine, as well as the deposition of Sarah Tracy (witness identified in Paragraph 245 of
5 Plaintiff's First Amended Complaint), Churchill County and Ben Trotter must subpoena
6 records and take the depositions of the person most knowledgeable regarding Erwine's
7 rejection from employment from each of the agencies identified in the First Amended
8 Complaint.

9
10 B. Information Requested by LR 26-1:

11 1. Discovery Cut-Off Date:

12 The parties request three hundred (300) days from August 6, 2024, which is the
13 date of the early case conference.

14 All discovery must be completed no later than Monday, June 2, 2025. When
15 producing documents responsive to a discovery request, the documents shall be
16 numbered and the responsive documents shall be specifically referred to by bates-
17 number in the response.

18 The parties anticipate that their initial, supplemental, and responsive production of
19 materials will be in .pdf and/or paper formats. Such production may be served by
20 electronic means. The parties understand that the United States' productions of electronic
21 files including .pdfs must typically be made via encrypted means, e.g., an encrypted disc,
22 with password provided separately, or use of the United States' cloud-based file
23 exchange portal, "USAfx." Should any technical difficulties arise with these encrypted
24 means, counsel will make good faith efforts to meet, confer, and resolve the difficulties.

1 The claims against the United States, arising under the Federal Tort Claims Act,
2 are subject to a bench trial, so there is no issue about the viewing of electronic evidence
3 during jury deliberations. Counsel will further discuss and address the presentation of
4 electronic exhibits at trial in connection with the joint pretrial order, pretrial conference,
5 and/or calendar call, as applicable and appropriate.
6

7 2. Amending the Pleadings and Adding Parties:

8 The date for filing motions to amend the pleadings or to add parties shall not
9 be later than ninety (90) days after the Rule 26(f) conference and, therefore, not later than
10 November 4, 2024 . Any party causing additional parties to be joined or brought to this
11 action shall contemporaneously therewith cause a copy of this Order to be served upon
12 the new party or parties.
13

14 3. Fed. R. Civ. P. 26(a)(2) Disclosures (Experts):
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16 The last day for disclosures required by Fed. R. Civ. P. 26(a)(2) concerning
17 experts shall be Thursday, April 3, 2025. The last day for disclosures regarding rebuttal
experts shall be Friday, May 5, 2025.
18

19 4. Dispositive Motions:
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21 The parties shall file dispositive motions not more than thirty (30) days after
the discovery cut-off date and, therefore, not later than Wednesday, July 2, 2025.
22

23 5. Pretrial Order:
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25 If no dispositive motions are filed, and unless otherwise ordered by this
Court, the Joint Pretrial Order shall be filed not more than thirty (30) days after the date
set for filing dispositive motions and, therefore, not later than Wednesday, August 1,
26 2025. In the event dispositive motions are filed, the last day to file the Joint Pretrial Order
shall be suspended until thirty (30) days after the ruling on the dispositive motions.
27
28

1 D. Certifications

2 1. By signing below, the parties make the following certifications:

3 The parties have met and conferred about the possibility of using alternative
4 dispute-resolution processes including mediation, arbitration, and if applicable, early
5 neutral evaluation.

6 The parties have considered consent to trial by a magistrate judge under 28 U.S.C.
7
8 § 636(c) and Fed. R. Civ. P. 73.

9 Plaintiff requests that this matter be assigned to Early Neutral Evaluation program
10 under LR 16-6(a) and believes this is required under LR 16-6(a) as Plaintiff's First
11 Amended Complaint alleges a racial discrimination claim.

12 Churchill County and Ben Trotter are opposed to assignment of this Case to the
13 Early Neutral Evaluation Program. Churchill County and Ben Trotter participated in an
14 Early Neutral Evaluation (followed by private mediation and court supervised settlement
15 conferences) in Case No. 3:18-cv-00461-RCJ-WGC on February 4, 2019, on the same
16 claims brought against them as are set forth in Plaintiff's First Amended Complaint.
17 Under these circumstances, Churchill County and Trotter believe assignment of this case
18 to the ENE program is unwarranted. In addition, Churchill County and Ben Trotter submit
19 that LR II 16-6(a) does not apply to the claims brought against them in this case.
20

21 The United States respectfully submits that the Court's Early Neutral Evaluation
22 program is not applicable to Plaintiff's tort claims against the United States. Additionally,
23 with the history and pending motions to dismiss, the United States is not confident that an
24 ENE (a pre-discovery, settlement conference) would be a productive use of the parties
25 and the Court's time and resources.
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28

DATED: August 14, 2024

BY: /s/ Melanie Bernstein Chapman

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Dated: August 14, 2024

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DATED: August 14, 2024

BY: /s/ Patrick A. Rose

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DATED: August 14, 2024

BY: /s/ Katherine Parks

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Dated: August 14, 2024

BY: /s/ Gene Burke

Gene Burke
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Pro Se

IT IS SO ORDERED:

UNITED STATES MAGISTRATE JUDGE

DATED: _____